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Security Council

Sixty-fifth year

Provisional

6336th meeting

Friday, 11 June 2010, 3 p.m.
New York

President:	Mr. Heller	(Mexico)
Members:	Austria	Mr. Mayr-Harting
	Bosnia and Herzegovina	Mr. Barbalić
	Brazil	Mrs. Viotti
	China	Mr. Wang Min
	France	Mr. Araud
	Gabon	Mr. Issoze-Ngondet
	Japan	Mr. Okuda
	Lebanon	Mr. Salam
	Nigeria	Mr. Onemola
	Russian Federation	Mr. Karev
	Turkey	Mr. Apakan
	Uganda	Mr. Mugoya
	United Kingdom of Great Britain and Northern Ireland	Sir Mark Lyall Grant
	United States of America	Mr. DeLaurentis

Agenda

Reports of the Secretary-General on the Sudan

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The meeting was called to order at 3.15 p.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President (*spoke in Spanish*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

I wish to draw the attention of Council members to document S/2010/265, which contains a letter dated 28 May 2010 from the Secretary-General addressed to the President of the Security Council.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, to whom I give the floor.

Mr. Moreno-Ocampo: I thank the Security Council for the opportunity to report on the activities undertaken by the Office of the Prosecutor of the International Criminal Court since the last briefing (see S/PV.6230)

I will first provide a summary of the cases investigated since the Security Council referred the situation to the International Criminal Court. My mandate is to end impunity for the most serious crimes, in order to contribute to the prevention of future crimes. We conducted three investigations on the Darfur situation.

In our first case, we investigated a consistent pattern of attacks against the civilian population during the period of 2003 to 2005. Sudanese armed forces would bomb villages in Darfur and surround them, and then ground troops would move in to kill, rape and pillage civilians in their homes. Those attacks forced the displacement of a million civilians to a hostile environment.

The evidence showed the role of the then Minister of State for the Interior, Ahmad Harun, as coordinator of the Government of the Sudan forces, including recruiting into and the financing of the militia/Janjaweed in the Popular Defence Forces. An arrest warrant was also issued against a militia/Janjaweed leader, Ali Kushayb.

On 27 April 2007, Pre-Trial Chamber I issued arrest warrants against both individuals for war crimes and crimes against humanity. This is the case that is referred to in the note verbale (S/2010/265, annex), on which the judges made their decision about the lack of cooperation by the Republic of the Sudan.

In our second case, we investigated the continuous involvement of the entire Sudanese State apparatus in the attacks on the villages and, additionally, a different pattern of crimes committed against displaced persons. Such attacks are calculated to drive entire groups to inhospitable areas, where they die immediately, or into camps, where they die slowly.

On 4 March 2009, Pre-Trial Chamber I issued an arrest warrant against President Omer Al-Bashir for war crimes and crimes against humanity, including the crimes of extermination and rape. The judges found that the obstruction of humanitarian assistance in Darfur is more than a bureaucratic problem. It constitutes the crime of extermination. After forcing civilians out of their homes, Sudanese forces would deny any meaningful assistance to those who reached the camps for the internally displaced, forcing the United Nations and others to set up the largest humanitarian operation in the world, and yet obstructing their life-saving efforts every step of the way.

I must be clear: the crime of extermination does not require killing by bullets. It consists of intentionally inflicting conditions of life — inter alia, the deprivation of access to food and medicine — calculated to bring about the destruction of part of a population. That is extermination.

In our third case, we are prosecuting the three commanders of the rebel group that attacked peacekeepers in an event that took place in Haskanita in September 2007, causing the deaths of 12 African Union peacekeepers and leaving thousands of people

without protection. The Judges have found that the attack constituted a crime under the Statute; however, they found the evidence insufficient to establish the criminal responsibility of rebel commander Abu Garda. The Office will therefore present additional evidence. We anticipate that a new confirmation hearing will then be held in the near future. These are the persons identified as most responsible for the most serious crimes committed in Darfur over the past six years. There is no other case at this stage.

Let me now turn to the main point of my briefing today — cooperation. In the past, the Government of the Sudan recognized the role of the International Criminal Court and provided cooperation in other cases before the Court, including for the execution of arrest warrants. On 2 October 2005, the Government of the Sudan, without this Council's involvement, signed an agreement with my Office to implement the arrest warrants issued by the ICC against Joseph Kony and four leaders of the Lord's Resistance Army. This cooperation was of critical importance to removing the leaders of the Lord's Resistance Army from their safe haven in the Sudan.

In the Darfur case, cooperation was forthcoming for two years. Judicial records and other documents were shared under article 53 of the Rome Statute, Sudanese officials were interviewed in Khartoum, including as suspects under article 55, and five missions were undertaken to Khartoum, the last in January and February 2007. In June 2007, the Government of the Sudan accepted the notification of the arrest warrants against Harun and Kushayb. Since then, however, there has been a public and consistent refusal to cooperate with the Court and to comply with resolution 1593 (2005).

Therefore, on 25 May 2010, the Pre-Trial Chamber issued its decision informing the Security Council about the lack of cooperation by the Republic of the Sudan. In the decision, the Pre-Trial Chamber considers that the Court has taken all possible measures to ensure the cooperation of the Republic of the Sudan. The decision stresses that the obligation of the Republic of the Sudan to cooperate with the Court stems directly from the Charter of the United Nations and resolution 1593 (2005). The Chamber concludes that the Republic of the Sudan is failing to comply with its cooperation obligations stemming from resolution 1593 (2005) in relation to the enforcement of the warrants of arrest issued by the Chamber against Ahmad Harun and Ali Kushayb.

Under resolution 1593 (2005), the Security Council decided that the "Government of the Sudan and all other parties to the conflict in Darfur shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor". The Government of the Sudan, a sovereign territorial State, has the primary responsibility and is fully able to implement the warrants issued by the Court. It has not done so, and the Judges have taken the step to make a decision and notify it to this Council.

While cooperation from the Sudan is lacking, it is noteworthy that, from all other actors, cooperation is forthcoming. There are 111 States parties to the Rome Statute with a legal obligation to enforce the Court's arrest warrants. Additionally, the Security Council has urged all United Nations Members to cooperate with the Court. I wish to confirm that, as of today, no other State Member of the United Nations and no other party to the conflict has refused cooperation with the Court in the Darfur situation. To the contrary, many States, including non-States parties to the Rome Statute, following up on resolution 1593 (2005), have taken steps within their power to encourage cooperation by the Sudan and to isolate and ultimately facilitate the surrender of the individuals sought by the Court. They have maintained and expressed public and diplomatic support for the Court and have severed all non-essential contacts with those subject to ICC warrants.

Let me give a few recent examples. President Jacob Zuma of South Africa emphasized on 4 June 2010 that South Africa would arrest anyone under an ICC arrest warrant who travelled to South Africa. This was a strong message of respect for resolution 1593 (2005) and of support for accountability. President Nicolas Sarkozy took the unprecedented decision to move the date and location of the twenty-fifth France-Africa Summit to avoid meeting with a person who is the object of an arrest warrant. This was a strong message of respect for resolution 1593 (2005) and of support for accountability. President Yoweri Museveni recalled that he would abide by his ICC obligations should President Omar Al-Bashir attempt to represent the Sudan at the next African Union Summit in Kampala. Kenya, on the occasion of the summit of the Intergovernmental Authority on Development held in March in Nairobi, stated the same.

Non-States parties have also asserted that those subject to an arrest warrant would need to face justice. Secretary-General Ban Ki-moon has repeatedly reiterated the need to comply with resolution 1593 (2005) and to respect the decisions of the Court. The African Union and the League of Arab States, in addition to the United Nations and other international actors, have endeavoured for years to help to end impunity in Darfur. The implementation of the Mbeki Panel recommendations and the July 2008 Arab League solution package would be important steps towards ending crimes in Darfur.

In a statement on 23 March 2010, President Mbeki, as the head of the African Union High-Level Implementation Panel, said, "there is a perfect understanding between the Panel and the International Criminal Court". President Mbeki explained that the arrest warrants issued by the Court are a matter of fact and can be reviewed only by the ICC Judges, but he added that the rest of the crimes committed in Darfur should be addressed by the Sudan domestically, and the African Union Panel has formulated recommendations in this regard.

All such complementary efforts show compliance with the Security Council's resolution and the Court's decision. Today, the Security Council has the opportunity to further this collective effort. The Council already reminded the Government of the Sudan of its obligation to respect resolution 1593 (2005) during its visit to Khartoum from 16 to 17 June 2007.

The Security Council also, in adopting presidential statement S/PRST/2008/21, referred explicitly to the transmission of the arrest warrants against Harun and Kushayb, and urged the Sudan to cooperate fully and to provide any necessary assistance. I hope that the Security Council can build further upon such efforts.

I should like to brief the Council on the alleged crimes committed during the past six months. I would have liked to report that the conditions in Darfur had improved and that crimes had stopped. Sadly, the truth is that attacks against civilians not participating in the conflict continue.

In February, immediately after the signing of a peace agreement and a public commitment to peace, 100,000 civilians were forcibly displaced by Sudanese armed forces in the Jebel Marra. The modus operandi was the same as the one used by Ahmad Harun from 2003 to 2005 — air bombardments followed by attacks by the Sudanese armed forces integrating with militia/Janjaweed. It was identical.

Sadly, the crime of extermination against the millions displaced into camps continues to be committed. Acts aimed at inflicting inhumane conditions of life continue. Under-Secretary-General Holmes reported to the Council last week on the difficulties of accessing many areas and the problems of finding interlocutors in Khartoum to address those issues. Those are not technical or bureaucratic issues or the result of disorganization. The decision to expel humanitarian organizations and the accumulation of obstacles constitute a policy — a criminal policy — of identified Sudanese officials with the aim of committing the crime of extermination.

Gender crimes remain unabated in Darfur. In his report of 26 May, the United Nations independent expert on the situation of human rights in the Sudan, Justice Mohammed Chande Othman from Tanzania, wrote:

> "Acts of sexual violence, particularly against female internally displaced persons, is still of concern in Darfur... In most instances, the perpetrators were identified as individuals or groups of armed men often dressed in military uniforms. In recent times, women living in close proximity to military camps have also become vulnerable to sexual attacks from soldiers ... The military authorities deny the rape allegations, claiming that the soldiers were engaged in consensual relationships with the women." (*A/HRC/14/41, para. 59*)

Of even greater concern, the independent expert notes that victims are increasingly discouraged from reporting rape and sexual violence because they know they will not benefit from remedial action. Rapes are not stopping; reporting is stopping.

This is consistent with the finding of the African Union High-Level Panel that "faith in the criminal justice system has been severely eroded", and with the findings of others. This is in line as well with the 2009 report of the Panel of Experts established pursuant to Security Council resolution 1591 (2005) concerning the Sudan , which states:

> "There appears to be an overwhelming apathy towards, and unwillingness to investigate, acts of sexual and gender-based violence." (*A/2009/562, annex, para. 304*)

There is a need for an updated comprehensive report by the Secretariat on the current situation in the camps and villages. The fragmented information on rapes and on the obstacles to humanitarian assistance must be put together to allow the international community to consider the current extent of the suffering of the civilians in Darfur.

As I mentioned in my report, there is also an opportunity for the Council, as it prepares for the anniversary of the adoption of resolution 1325 (2000) and for its special session of October 2010 under the Ugandan presidency, to implement its groundbreaking resolutions on gender violence in specific situations where crimes are ongoing.

To conclude, five years ago the Security Council considered that the Darfur situation constituted a threat to peace and security and decided to refer the situation to the Court as part of its efforts to find a global solution to the conflict. Security Council members presented the need to integrate four different tracks in Darfur: humanitarian assistance, peacekeepers, political negotiations and justice. The facts unveiled by the Prosecution and adjudicated by the Judges shed light on some of the problems faced on these different tracks.

The impunity of Ahmad Harun and Ali Kushayb is one of the main problems. It carries a price. Ali Kushayb is a tribal leader who still exercises power in his own area in South Sudan, and a clear example to other Janjaweed that they can continue committing crimes. There is impunity.

The case of Harun is even more serious. His expertise is in mobilizing and using militias to attack civilians and disguising his activities. He was allegedly involved in the worst attacks against civilians in the Nuba mountains during the 1990s. From 1997 to 2000, he was Executive Director of the Peace and Resettlement Administration in South Kordofan, which was in reality a secret service organization that collected information to prepare attacks on villages. From 2003 to 2005, as Minister of State for the Interior, Harun coordinated the attacks on civilians in their villages in Darfur. Between 2005 and 2009, Harun was the Minister of State for Humanitarian Affairs, managing the crimes in the camps for displaced persons in Darfur.

In my December 2007 briefing (see S/PV.5789), I highlighted to the Council that Ahmad Harun had then been appointed to a committee on human rights violations and breaches of the Constitution in the South and North. In my subsequent briefing in June 2008 (see S/PV.5905), I reported that, as a member of that committee, Harun was sent to Abyei to manage the conflict. And, as Council members know, Abyei was burned down by tribal militias, with 50,000 citizens displaced.

Normally fugitives from justice go into hiding. Prosecutors have to unearth their whereabouts. This is not the case here. We know where Ahmad Harun. He is currently the Governor of South Kordofan. He should be arrested before he commits new crimes in his new position.

To conclude, I should like to clarify that any discussion of the evidence presented by my Office or of the charges included in the arrest warrants should be conducted in the courtroom in The Hague. The Judges' decisions will not be changed by political negotiations.

The decision on Sudanese non-cooperation in relation to Harun and Kushayb was adopted by the Judges and forwarded to the Security Council. The means to secure compliance by the Sudan with its obligations under resolution 1593 (2005) are a prerogative of the Council. The Council has dealt before with States' non-compliance in connection with the enforcement of arrest warrants. I hope that the Council can acknowledge the Judges' decision and follow up on it between now and my next report in December.

I would urge Council members to ensure that the arrest of Ahmad Harun and Ali Kushayb be a request that this Organization continues to insist on, through its representatives and envoys in the Sudan, as a critical condition for securing peace and stability in Darfur. This meeting and the Council's meeting on Monday offer a perfect opportunity for its members to integrate the request for the arrest of Harun and Kushayb into the general strategy relating to Darfur and the Sudan. Resolution 1593 (2005), as well as all other related Security Council resolutions, should be complied with.

The President (*spoke in Spanish*): I thank Mr. Moreno-Ocampo for his briefing.

There are no further speakers inscribed on my list. In accordance with the understanding reached in the Council's prior consultations, I now invite members to continue our discussion of the matter in a closed meeting.

The meeting rose at 3.40 p.m.